

#### IV. AMENDMENTS TO THE DRAWINGS

--- Replacement and annotated mark-up drawing sheets for amended figures showing the amended figures, if any, are attached at the Appendix hereto. Each figure is in compliance with 37 C.F.R. § 1.84. An explanation of the changes, if any, is set forth below in this “Amendments to the Drawings” section. Replacement drawing sheets are identified in the top margin as “Replacement Sheet.” Any replacement drawing sheet including amended figures includes all of the figures appearing on the immediate prior version of the sheet. Any annotated drawing sheets, if the same are required by the Examiner, are identified in the top margin as “Annotated Marked-Up Drawings.” Any deleted figure is noted by an instruction to delete the figure. Any corresponding amendment to the specification necessary to be made because of an amendment to the drawings in this section is made in the corresponding “Amendments to Specification” section.

- *THE DRAWINGS OF THE PATENT IS HEREBY AMENDED AS SET FORTH BELOW:*

- *No Amendment Made to the Drawings*
- *Attachments: None*

## V. REMARKS/ARGUMENTS

- STATUS OF THE CLAIMS

Claims 1 - 22 were pending in the office action. Claims 1, 15, 21 and 22 are amended herein. Thus claims 1 – 22 are currently pending in this response. No other claims have been amended or cancelled herein. Claims 4 – 14 and 17 – 20 were allowed in the Final Office Action of October 23, 2008 (mail date).

- REJECTIONS

- Claim Rejection Under 35 U.S.C. §112, First and Second Paragraph

- Examiner's Stance

The Examiner in the Office Action of October 23, 2008 rejected claims 21 and 22 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner specifically objected to the subject matter in lines 10 and 11 of claim 21 and lines 12 and 13 of claim 22, asserting the same are new matter that are not supported by the original specification. Furthermore, the Examiner rejected claims 21 and 22 under 35 U.S.C. §112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Examiner asserts that “it is not clear whether the detector does not comprise a triggering and actuating component packaged in separate interchangeable modules.”

*Applicant's Response*

The Applicant respectfully traverses the Examiners rejection of claims 21 and 22, under 35 U.S.C. §112, first and second paragraph, asserting that each of the claims is supported by the specification and that one of ordinary skill in the art would not find such claims indefinite. However, in order to expedite issuance of the claims, the Applicant has amended claims 21 and 22 to further define embodiments covered by the present specification.

In respect of the embodiment asserted in claim 21, not only is the language “wherein the detector does not comprise a triggering and actuating component packaged in separate interchangeable modules” removed, as suggested by the Examiner, but it is stated the signal generator is “integrated within the packaging material comprising said package.” This is clearly shown in an embodiment in Fig. 1. Applicant asserts that none of the prior art shown by the examiner teaches or suggests the same.

Claim 22 now recites as that the detection means is a detector that detects motion. This is clearly supported, among other places in the specification, at column 2, lines 8 – 30 of the U.S. Patent 5,795,209, as published. Furthermore, the claims now limits the packaging means to a select group of items. The language “detection means does not require activation by an electronic triggering device for detection of said change,” has been removed as per the Examiner's suggestion.

In light of the changes made in respect of claims 21 and 22, Applicant respectfully requests that the Examiner remove the 35 U.S.C. §112, first and second paragraph, rejections, and the further objections raised on interview with respect to the Amendment-After-Final, and allow the claims to issuance.

- REJECTION UNDER 35 U.S.C. §102(E)
- Examiner's Stance

The Examiner has rejected claims 1, 2, 15, 16, 21 and 22 under 35 U.S.C. §102(e) as anticipated by Wilk, United States Patent No. 5,304,096. The Examiner asserts that the “enclosing shell” limitation can be read to cover a box with a cover and lid. The Examiner asserts that all other elements are found in the box of Wilk.

Applicants' Response

The Applicant respectfully traverses the Examiner rejection of claims 1, 2, 15, 16, 21 and 22 under 35 U.S.C. §102(e) as anticipated by Wilk, United States Patent No. 5,304,096, urging that the claims are patentable because not every element of the claims is found in the Wilk reference, United States Patent 5,304,096.

Irrespective, Applicant has amended claims 1, 15, 21 and 22, the independent claims in the recited rejected claims under 35 U.S.C. §102(e), to more particularly define these embodiment claims over the prior art of record. Applicant asserts such amendments clearly define over the references of art, and therefore that these claims, and claims 2 and 16 that depend from claim 1 and 15 respectively, are patentable.

Claims 21 and 22 clearly define over the Wilk reference as discussed above.

Claim 1 now recites more appropriately the Markush grouping. To overcome the Examiner's assertion that an “enclosing shell” covers a box with a cover and lid, both the “box” and “enclosing shell” have been removed from the Markush grouping. As such claim 1, and claim 2 which depends there from, are asserted to be patentable over the prior art of record. Applicant notes no teaching referenced by the Examiner that asserts the structures recited being associated with a bag, wrapping paper or ribbon material.

Claim 15 now recites more appropriately the Markush grouping. In terms of claim 15, again the “an enclosing shell” in the Markush group has been removed. For the same reason as claim 1, it is now asserted that claim 15, and claim 16 that depends there from, are

allowable. In accord with the Examiner's suggestion on interview, the term "associated with" in claims 15, 21, and 22 have been amended, in accord with claim 1. Claim 22 has been amended in part in accord with the language of claim 1.

REJECTION UNDER 35 U.S.C. §103(A)

- Examiner's Stance

The Examiner has rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over Wilk, United States Patent No. 5,304,096, in view of Miller et al., United States Patent No. 5,385,344.

The Examiner asserts that "Wilk teaches most of the elements of the claimed invention except a light sense-detectable signal." The Examiner asserts that "Miller et al teaches that it is well known to use a light sense-detectable signal for an amusement device for the purpose of playing pranks." Therefore, the Examiner maintains that "[i]t would have been obvious to one of ordinary skill in the art to incorporate light as suggested by Miller in the device of Wilk for the reasons set forth above."

Applicants' Response

The Applicant respectfully traverses the Examiner's 35 U.S.C. 103(a) rejection of claim 3 asserting that one of ordinary skill in the art looking at the invention as a whole would not find the asserted embodiment of claim 3 obvious. However, as Applicant has amended claim 1, from which claim 3 depends, Applicant asserts that claim 3 is patentable for at least the reasons set forth with respect to claim 1.

ALLOWABLE SUBJECT MATTER

- Examiner's Stance

The Examiner has allowed claims 4 – 14 and 17 – 20.

- Applicants' Response

Applicant respectfully extends his appreciation to the Examiner for acknowledging the patentability of claims 4 – 14 and 17 -20.

CONCLUSION TO REMARKS

Applicant asserts that this response is fully responsive to the Examiner's office action dated October 23, 2008. Applicant again notes the exceedingly long time this application has been in reissue. In order to enjoy any useful patent term, Applicant respectfully seeks early allowance of the pending claims. Applicant extends his appreciation to the Examiner for the suggestions raised in the interview of January 22, 2008.

Date: February 2, 2009

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Steve Moore", is written over a horizontal line.

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## **VI. APPENDIX**

- *No appendix is intended to be attached*